

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES E. COLE,

Petitioner,

v.

**WARDEN, LEBANON
CORRECTIONAL INSTITUTION,**

Respondent.

**CASE NO. 2:14-CV-578
JUDGE GEORGE C. SMITH
Magistrate Judge Deavers**

OPINION AND ORDER

On April 25, 2016, the Magistrate Judge issued an *Order and Report and Recommendation* denying Petitioner's request for an evidentiary hearing and *Pro Se Motion to Be a Witness and to be Called as a Witness* (ECF No. 7), and recommending that this action be dismissed. (ECF No. 13). This matter is before the Court on Petitioner's *Motion for Protective Petition for Stay and Abey*, (ECF No. 14), and Respondent's *Response in Opposition*. (ECF No. 15).

Petitioner requests a stay of proceedings pending exhaustion of state court remedies as to his claims. However, it does not appear that Petitioner has presented any unexhausted claims for relief. Petitioner does not identify the nature of any potentially unexhausted claims. Rather, the record reflects that his claims are barred as procedurally defaulted or without merit. Therefore, the record fails to reflect a stay is warranted. *See Rhines v. Weber*, 544 U.S. 269 (2005) (where the one-year statute of limitations may bar a petitioner who presents a "mixed petition," or exhausted and unexhausted claims, from re-filing his habeas corpus petition, a stay may be granted in certain limited circumstances).

Therefore, Petitioner's *Motion for Protective Petition for Stay and Abey*, (ECF No. 14), is **DENIED**. The *Order and Report and Recommendation* (ECF No. 13) is **ADOPTED** and **AFFIRMED**. Petitioner's request for an evidentiary hearing and *Pro Se Motion to Be a Witness and to be Called as a Witness* (ECF No. 7), are **DENIED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

|s| *George C. Smith*
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT